

## Military and Overseas Voter Empowerment “MOVE” Act

Pub. L. No. 111-84, §§ 577-83(a)

### Overview:

The federal Military and Overseas Voter Empowerment (“Move”) Act, was enacted by Congress in 2009 as a subtitle of the National Defense Authorization Act during the 2010 fiscal year.<sup>1</sup> The MOVE Act amended UOCAVA to establish new voter registration procedures that states must follow for federal elections, most of which were to be implemented in November 2010.<sup>2</sup>

The following summarizes the legislative changes (namely, additions) made in §§ 577-581:

### **Section 577. *Establishment of Procedures for Absent Uniformed Services Voters and Overseas Voters to Request and for States to Send Voter Registration Applications and Absentee Ballot Applications by Mail and Electronically.***

- Establishes procedures (in addition to other methods already employed in the state for voter registration/absentee ballot applications):
  - For absent uniformed services or overseas voters to request – either by mail or electronically – voter registration and absentee ballot applications for general, special, primary, and runoff federal elections;
  - For states to send by mail/electronically such ballots listed above to such voters;
  - By which such voters can designate whether a preference for the method (mail or electronically) by which voter registration/absentee ballot applications be sent. Sec. (a)(1)(C).
- Each State must designate and provide at least 1 means of electronic communication:
  - For the use described above; or
  - For use by states as described above; or
  - For providing “related voting, balloting, and election information” to absent uniformed services voters and overseas voters. Sec. (a)(2).
- A state may also provide multiple means of electronic communication, including a means for tailored to the jurisdiction of the state. Sec. (a)(2).
  - Such electronic communication must be provided with all informational and instructional materials accompanying balloting materials sent to such voters. Sec. (a)(2).
  - Federal Voting Assistance Program of the Department of Defense must make and maintain an online, public repository of State contact information, including the means of electronic communication being used, and the single State office designated per the statute. Sec. (a)(2).
- In the event the overseas/absent uniformed services voter does not designate a preference of communication, the state must transmit the appropriate application by “any delivery method allowable in accordance with applicable state law” and if there is no such law by mail. Sec. (a)(2).
- States “shall ensure” that the procedures “protect the security and integrity” of the voter registration and absentee ballot application request processes. Sec. (a)(2).
  - To extent practicable, such procedures must ensure that the privacy of identity and other personal data of the voter is being protecting throughout the process. Sec. (a)(2).
- The amendments made by this section shall apply with respect to the regularly schedule general election held in November 2010 and each succeeding election for federal office. Sec. (b).

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<sup>1</sup> Uniform Military and Overseas Voters Act: Frequently Asked Questions, Uniform Law Commission, available at <http://www.uniformlaws.org/Shared/Docs/UMOVA%20FAQ%209-28-2010.pdf>.

<sup>2</sup> *Id.*

**Section 578. *Establishment of Procedures for States to Transmit Blank Absentee Ballots by Mail and Electronically to Absent Uniformed Services Voters and Overseas Voters.***

- Establishes procedure(s), in addition to any other existing methods, for transmitting blank absentee ballots to absent uniform services/overseas voters. Sec. (a)(1)(c).
  - Each state shall establish procedures to transmit blank absentee ballots by mail and electronically, in accordance with the preference indicated by the voter. Sec. (a)(2).
  - If voter doesn't designate a preference, the state will transmit the ballot by any delivery method allowable in accordance with applicable state law, and if there is none, by mail. Sec. (a)(2).
- States must ensure such procedures protect the security and integrity of absentee ballots. Sec. (a)(2).
  - Procedures established must ensure that the privacy of the identity and other personal data of the voter is protected throughout the process. Sec. (a)(2).
- The amendments made by this section shall apply with respect to the regularly scheduled general election held in November 2010 and each succeeding election for federal office. Sec. (b).

**Section 579: *Ensuring Absent Uniformed Services Voters and Overseas Voters Have Time to Vote.***

- Except in the hardship exemption listed below, ballots should be transmitted not later than 45 days before the election; and
  - When the request is received less than 45 days before an election;
    - in accordance with State law,
    - if practicable and as determined appropriate by the state, in a manner that expedites the transmission of such absentee ballot. Sec. (a)(1)(C).
- Hardship exemption: If the chief State election official determines the state can't meet such requirements due to an "undue hardship," the official must request the Presidential designee grant a waiver to the State of the application of such subsection. Sec. (a)(2). Such request shall include:
  - Recognition that the purpose is to allow absent uniformed services voters and overseas voters enough time to vote. Sec. (a)(2).
  - An explanation of the hardship that indicates why the state is unable to transmit these voters an absentee ballot accordingly. Sec. (a)(2).
  - The number of days prior to the election for federal office that the state requires absentee ballots be transmitted. Sec. (a)(2).
  - A comprehensive plan to ensure that such voters are able to receive absentee ballots and submit marked ballots in time for election day. Sec. (a)(2). The plan includes the steps the state will undertake to ensure they have time to receive, mark and submit ballots, and why the plan provides sufficient time to vote as a substitute for the statutory requirements set above. Sec. (a)(2). Also the underlying factual information explaining how the plan provides such sufficient time to vote as a substitute. Sec. (a)(2).
  - Approval of waiver request:
    - After consulting with the Atty. General, the Presidential designee will approve the request if the following are present:
      - Plan provides voters sufficient time to receive, mark, and submit their ballots;
      - One or more of the following creates an undue hardship for the state:
        - The State's primary election date prohibits the state from complying with subsection;
        - State has suffered a delay in generating ballots due to a "legal contest";

- The state constitution prohibits state from complying. Sec. (a)(2).
- Timing of Waiver:
  - State shall submit not later than 90 days before the election for federal office with respect to which request is submitted, and the Presidential designee approves or denies not later than 65 days before the said election. Sec. (a)(2).
  - Exception: If state requests waiver as a result of an undue hardship, the state shall submit the written waiver request as soon as practicable. The designee shall approve or deny the request not later than 5 business days after the date on which the request was received. Sec. (a)(2).
- Application of Waiver:
  - Waiver shall only apply with respect to the election for which the request was submitted. For each subsequent election the Presidential designee shall only approve a waiver if the state has submitted a request. Sec. (a)(2).
- Runoff elections: Overseas Citizens Absentee Voting Act (as amended by §§ 577-78)
  - If the state declares/otherwise holds a runoff election, establish a written plan that provides absentee ballots to voters in a manner that gives them sufficient time to vote in the runoff election. Sec. (b)(3).
- The amendments made by this section shall apply with respect to the regularly schedule general election held in November 2010 and each succeeding election for federal office. Sec. (c).

***Section 580 – Procedures for Collection and Delivery of Marked Absentee Ballots of Absent Overseas Uniformed Services Voters.***

- The Presidential designee shall establish procedures for collecting marked absentee ballots of absent overseas uniformed service voters, including those prepared by states and the federal write-in absentee ballot already prescribed in Section 103, and for delivering such marked ballots to the appropriate election officials. Sec. (a).
- Presidential designee must implement procedures facilitating delivery of marked absentee ballots to the local officials, not later than the date by which an absentee ballot must be received in order to be counted in the election. Sec. (a).
- The designee shall carry this out in cooperation/coordination with the USPS, and shall provided expedited mail delivery service for all such marked absentee ballots of absent uniformed services voters collected on or before the deadline above. Sec. (a).
- Deadline:
  - Noon (in the location where the ballot is collected) on the seventh day before the date of the election. Sec. (a).
  - If the Presidential designee determines the deadline is not sufficient to ensure timely delivery in a particular place due to remoteness, etc., he or she may establish an alternative deadline, the latest date sufficient to provide timely delivery. Sec. (a).
- No postage requirement. Sec. (b)(4).
  - Marked absentee ballots will be postmarked with a record of the date on which the ballot is mailed. Sec. (a).
- Designee shall appropriately inform individuals anticipated to be absent overseas uniformed services voters in a regularly scheduled federal general election to which this section applies, including the manner in which such voters may utilize such procedures for the submittal of marked absentee ballots. Sec. (a).
- There are authorized to be appropriate to the designee such sums as may be necessary to carry out this section (through the collection and delivery of marked absentee ballots of absent overseas uniformed services voters in elections for federal office). Sec. (a).

- Tracking marked ballots: Chief state election official, in coordination with local jurisdictions, shall develop a free access system by which an absent voter may determine whether the ballot has been received by the appropriate state official. Sec. (c-d).
- Protecting Voter Privacy and Secrecy of Absentee Ballots
  - To the greatest extent possible, take such sections as may be necessary:
    - To ensure that absent uniformed services voters who case absentee ballots at locations/facilities under the jurisdiction of the Presidential designee are able to do so “in a private and independent manner,” and;
    - To protect the privacy of the contents of absentee ballots cast by voters while such ballots in the possession or control of the Presidential designee. Sec. (e).
- The amendments made by this section shall apply with respect to the regularly schedule general election held in November 2010 and each succeeding election for federal office. Sec. (f).

#### **Section 581 – *Federal Write-In Absentee Ballot.***

- Amended “general election for Federal office” to “general, special, primary, and runoff elections for Federal office.” Sec. (a)(1)(C).
- The amendments made by this section shall apply with respect to the regularly schedule general election held in November 2010 and each succeeding election for federal office. Sec. (a)(2).
- Promotion and Expansion of Use: striking “General – the Presidential” and inserting “General.” Sec. (b)(1).
- Not later than December 31, 2011, the Presidential designee shall adopt procedures to promote and expand the use of the Federal write-in absentee ballots a back-up measure.
  - Presidential designee shall utilize technology to implement a system under which the voter may – enter the address of the voter of other relevant information in the appropriate jurisdiction of the state, and the system will generate a list of all candidates in the election for federal office in that jurisdiction; and
  - Submit the marked federal write-in absentee ballot by printing the ballot (including complete instructions for submit) the appropriate state election official and the mailing address of the single state office designated under Section 102(b). Sec. (b)(2).
- There are authorized to be appropriated to the Presidential designee such sums as may be necessary to carry out this paragraph. Sec. (b)(2).